

The only issues before the Board on this appeal are:

1. Did claimant prove he injured his neck due to the work he performed for respondent through April 23, 2005?
2. If so, did claimant provide respondent with timely notice of the alleged accidental injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the July 28, 2005, Order should be affirmed on the basis that claimant failed to prove he injured his neck due to the work he performed for respondent.

About September or October 2004, claimant began experiencing coldness and numbness in his legs. Claimant, who worked in respondent's plaster room, consulted his personal physician, Dr. Mark VinZant. In short, Dr. VinZant referred claimant to a neurologist who obtained nerve conduction tests and an MRI. Eventually, claimant was referred to Dr. Nazih Moufarrij, who on April 27, 2005, performed decompression laminectomies between the fourth and seventh cervical vertebrae. The last day claimant worked before his neck surgery was either April 22 or 23, 2005.

Claimant's testimony is credible that he did not learn that his neck problems might be related to his work until May 31, 2005, when he attended a follow-up visit with his surgeon. Accordingly, claimant had just cause for failing to provide respondent with notice of an accidental injury within 10 days of its occurrence.<sup>1</sup> And the normal 10-day period to report a work-related injury was extended to 75 days from the date that claimant left work for his surgery. At the preliminary hearing, claimant's attorney represented that respondent received notice of claimant's alleged neck injury on June 17, 2005, which was within 75 days of when he left work before surgery.

The Board, however, finds that claimant has failed to prove his alleged neck injury was caused by his work. The only evidence presented at the preliminary hearing that addressed the cause of claimant's neck problems or related symptoms was claimant's testimony. According to claimant, Dr. Moufarrij had stated it was possible that repetitive movement had caused it. Claimant testified, in part:

Q. (Mr. Stalcup) Now, what caused you to relate the conditions that you were having with your legs to work activity?

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<sup>1</sup> See K.S.A. 44-520.

A. (Claimant) When I did the follow-up care or the follow-up visit with Dr. Moufarrij, I had asked him what could have caused it, and he said, well, possibility -- or repetitive movement, and then he also indicated, you know, that there was a narrowing of the spinal cord.<sup>2</sup>

The record fails to establish that it is more probably true than not that claimant injured his neck working for respondent or that the neck surgery claimant underwent was precipitated by his work for respondent. Consequently, claimant's request for workers compensation benefits was properly denied.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>3</sup>

The parties are reminded that only those records that have some probative value regarding the disputed issues need be admitted.

**WHEREFORE**, for reasons different than those set forth by the Judge, the Board affirms the July 28, 2005, Order in so far as it denies claimant's request for workers compensation benefits.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 2005.

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BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant  
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>2</sup> P.H. Trans. at 11-12.

<sup>3</sup> K.S.A. 44-534a(a)(2).